

EXHIBIT B

DECLARATION OF KENNON TUBBS, M.D.

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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH CENTRAL DIVISION

DAMON CRIST,

Plaintiff,

v.

DR. KENNON TUBBS, et al.,

Defendants.

**DECLARATION OF KENNON TUBBS,
M.D.**

Case No. 2:10cv00675

Judge Ted Stewart

KENNON TUBBS, M.D., being first duly sworn, deposes and states as follows:

1. I am an adult resident of the United States of America and of the State of Utah, and I am over the age of eighteen (18) years.
2. I am competent to testify to the matters stated herein.

3. I am a Medical Doctor and licensed to practice medicine in the State of Utah. I obtained my medical degree from Georgetown University School of Medicine from 1992-1996. I fulfilled my three (3) year residency requirement at Utah Valley Family Practice in Provo, Utah and became Board Certified by the American Academy of Family Physicians in 1999.

4. I maintain a private medical practice in Draper, Utah. I am also employed by the Utah Department of Corrections (“DOC”) as a part-time physician at the Utah State Prison (“USP”) in Draper, Utah.

5. I am personally acquainted with plaintiff, Damon Crist, as I have treated and/or otherwise diagnosed plaintiff on several occasions at the USP.

6. The medical providers at the CUCF are required, by Utah Controlled Substance Act R157-37-603, to ensure we do not enable inmates to abuse controlled substances and other drugs.

7. I have reviewed Plaintiff’s medical records which are numbered M-Track 000001 through 000537.

8. The following statements are based on my review of the records and on my memory of treating Plaintiff.

11. Mr. Crist was a high school baseball player and attempted to pursue a career as a pitcher.

12. Mr. Crist did in fact play AA baseball. Mr. Crist injured his back at the age of 20 while playing baseball.

13. Mr. Crist was placed on narcotics (ie. Lortab, Percocet and Oxycontin) by a physician to help manage his pain.

14. Mr. Crist was on pain medication for an unknown period of time and developed an addiction to his pain medication.

15. When his physician discontinued his pain medication, Mr. Crist turned to heroin and methamphetamine. (Crist M-Track 000527)

16. Because of his drug use, Mr. Crist was required to complete a drug treatment program at Promontory Conquest.

17. During his stay at Promontory Conquest, I witnessed Mr. Crist playing softball and other sporting activities on numerous occasions.

18. Mr. Crist has continually complained of back pain and has demanded expensive and exhaustive workups of his back complaints.

19. Mr. Crist has had minimal MRI findings in his lumbar spine but it does not seem to impair his sporting activities or his daily lifestyle (Crist Hard Chart 000056 and Crist M-Track 000150-152, 000192, 000207, 000211, 000239, 0000254, 000260, 000271, 000283, 000353, 000371, 000409, 000419).

20. On 2/20/2009, I discontinued Mr. Crist's Tramadol (also known as Ultram) because of his constant complaints that the prescribed dose was not sufficient. Mr. Crist continually asked for a higher dosage. (Crist M-Track 000287)

21. I discontinued Mr. Crist's Tramadol because I was concerned that Mr. Crist may have been misusing his medication. The dose that he was taking should have been sufficient to manage the pain evidenced from his MRI.

22. At this time, I had also been told by prison officers that Tramadol was being sold on the “black market” in the drug rehab building and had requested that I only prescribe it to the neediest of patients. In my opinion, Mr. Crist did not fall into that category.

23. Mr. Crist became irate when I discontinued his medication. He was derogatory, insulting and threatening.

24. When he left my office, Mr. Crist understood that he was no longer to take Tramadol for pain management.

25. Upon leaving my office, Mr. Crist went to the pill line, cut in line and asked the med-tech for his Tramadol medication for the day. The med-tech, not being aware of my decision, gave Mr. Crist his afternoon dosage and evening dosage of Tramadol which constituted four (4) pills. Mr. Crist took two of the pills in front of the med-tech and took the other two pills to his cell. (Crist M-Track 000313)

26. Approximately 30 minutes after Mr. Crist left my office, I spoke with the med-tech about discontinuing Mr. Crist’s Tramadol. The med-tech explained that Mr. Crist had already been given his Tramadol for the day.

27. I accompanied officers to Mr. Crist’s cell to retrieve the Tramadol that Mr. Crist had received.

28. Mr. Crist could not produce the Tramadol to the officers and stated that someone must have stolen the Tramadol.

29. Because of his past drug addiction, evidenced manipulation of the med-tech, and the likelihood that he had developed a tolerance to Tramadol, it was my belief that Mr. Crist’s medical well being was not best served by continuing to prescribe Tramadol.

with narcotic type pain medication. I discussed this issue with Dr. Roberts and we concluded that Mr. Crist should be put on Darvocet instead of Tramadol so that his compliance could be more closely monitored. (Crist M-Track 000307)

30. Darvocet shows up in both the blood stream and urine when tested. Tramadol does not.

31. Two weeks after taking Mr. Crist off of Tramadol, I spoke with officers who stated Mr. Crist had been going to recreation and that he had been participating without evidence of discomfort. (Crist M-track 000307)

32. In or around September, 2010, Dr. Roberts and I decided that Darvocet would be discontinued within the prison system as it was receiving some "bad press." Darvocet was, in fact, pulled from the market in December, 2010. Because, Darvocet was no longer available, Tramadol was again prescribed for Mr. Crist, but at a lower dosage than what he was receiving before it was discontinued in February, 2009. (Crist M-Track 000149)

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the above statements are true and based upon my personal knowledge.

DATED this 21st day of June, 2011.

/s/ Kennon Tubbs
KENNON TUBBS, M.D.
(Signed copy of document bearing signature
of Dr. Kennon Tubbs is being maintained in
Office of the Filing Attorney)